IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 270 of 2006

1. Virendra Kumar Gupta S/o Shri Murli Lal

2. Ankur S/o Shri Virendra Kumar Gupta

3. Santosh Kumar Gupta S/o Shri Murli Lal

4. Anti R/o Village Sundarpur
Police Station – Biharigarh
District – Saharanpur (U.P.) .....Applicants

Versus

1. State of Uttaranchal

2. Chief Judicial Magistrate, Haridwar

3. District & Session Judge, Haridwar

4. Nitu S/o Nakli Ram
R/o Village Banwala
Police Station – Ranipur
District-Haridwar ...Respondents

Sri Subhash Chandra Tyagi, learned counsel for the applicants
Sri Nandan Arya, learned Standing Counsel for the State.

Hon'ble J.C.S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to set aside the summoning order dated 29.01.2004 passed by the Learned Chief Judicial Magistrate Haridwar & entire criminal proceedings in Criminal Case No. 729 of 2004 State Vs. Anti & others u/s 323, 376 I.P.C., Police Station – Ranipur, District – Haridwar and also to set aside the impugned order dated 04.08.2005 passed by the District & Sessions Judge, Haridwar in Criminal Revision No. 41 of 2004.

Brief facts for the disposal of this petition are that an F.I.R. was lodged by the complainant-respondent No.4 against the applicants u/s 354, 323 I.P.C. alleging therein that on 13.01.2003 at 9:00 pm that the applicants had beaten the complainant and his wife on the

road. Smt. Sushma was medically examined in Govt. Hospital, Haridwar and thereafter the supplementary medical report of the victim was prepared by the Medical Officer. Later on the matter was converted u/s 376 I.P.C. The matter was investigated and the final report was submitted. Feeling aggrieved by the said final report, the complainant preferred the protest petition before the learned C.J.M. alongwith affidavits. The complainant filed the affidavits of himself and his wife.

After appraisal of the evidence the learned Magistrate summoned the accused u/s 323 and 376 I.P.C. Feeling aggrieved by the said order, criminal revision was preferred before the Sessions Judge and it was dismissed by the learned Sessions Judge. Thereafter, the present petition has been filed.

Learned counsel for the applicants contended that the learned Magistrate while taking the cognizance had considered the affidavits filed by the complainants. It was further contended that the affidavits cannot be considered by the court below while taking the cognizance. In the instant case, the Magistrate had taken the cognizance on the basis of the affidavits filed by the complainant. The affidavits filed by the complainant cannot be taken into consideration. If the Magistrate was not satisfied with the evidence. He had two options to consider the said protest petition as a complaint and thereafter proceed with the case according to the law. The Magistrate had not taken the recourse which was available to him as such the order passed by the Magistrate is bad in law. A similar view has been taken by this court in Criminal Misc. Application No. 135 of 2006, Vijay Kumar Singh Vs. State of Uttaranchal and another dated 28th February, 2006.

In view of the above, the summoning order dated 29.01.2004 passed by the Learned Chief Judicial Magistrate, Haridwar in Criminal Case No. 729 of 2004 State Vs. Anti & others u/s 323, 376 I.P.C., Police Station – Ranipur, District – Haridwar is set aside and the

matter is remanded to the learned Magistrate to dispose of the case in the light of the observation made above.

With the aforesaid observation, the petition is disposed of accordingly.

All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

27th April, 2006

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